CHANG YUN TAI & ORS

v.

DATARAN MANTIN SDN BHD & ORS

HIGH COURT MALAYA, KUALA LUMPUR
KANG HWEE GEE J
[CIVIL SUIT NO: D8-22-1498-2005]
28 APRIL 2008

CIVIL PROCEDURE: *Striking out - Appeal against - Rules of the High Court 1980, O. 18 r. 19(1)(a) - Seeking declaration for financial agreements between plaintiff and bank as null and void - Whether banks as provider of loan should be concerned with propriety or legality of any contracts - Whether plaintiff's action against the banks purely preemptive - Whether an abuse of the process of the court - Whether deputy registrar correct in allowing defendant's application to strike out plaintiff's pleadings*

This was an appeal by the plaintiffs against the decision of the deputy registrar in allowing the application by the defendants to strike out the plaintiffs' cause of action on account there was no reasonable cause of action pursuant to O. 18 r. 19(1)(a) of the Rules of the High Court 1980. The plaintiffs were purchasers of apartments to be built by a developer, Dataran Mantin Sdn Bhd and had obtained end financing from various financial institutions including the defendants *vide* the respective loan cum assignment agreements entered into between them and the defendants. The plaintiffs alleged that the developer and directors of certain companies connected with the developer had conspired to defraud the plaintiffs by way of a scheme aimed at inducing the plaintiffs into purchasing apartments from the developer. In essence, the plaintiffs were seeking by this action to declare the sale and purchase agreements which they had individually entered into with the developer of the condominium void by reason that the local authority Majlis Perbandaran Nilai (the seventh defendant) the owner of the land, on which the condominium was developed had contravened s. 101(r) proviso (i) of the Local Government Act 1976. As against the financial institutions including the present defendants in this appeal, the plaintiffs alleged the primary instrument that was the sale and purchase agreements entered between the plaintiffs and the developer were void in law for having contravened the Power of Attorney Act 1949 and the

A Companies Act 1965 and consequently the end financing agreements which the plaintiffs signed with the financial institutions would be void and of no effect. The declaration sought in this case against the financial institutions (the subject of this appeal) was to declare the financing agreements null and void and
B accordingly the financial institutions should be estopped from enforcing the financing agreements.

Held (dismissing plaintiffs' appeal):

C **(1)** The relationship between the plaintiffs and the banks was purely commercial in nature strictly on *quid pro quo* basis that the monies were lent to be repaid in accordance with the terms and conditions of the loan agreements. The contracts were purely contracts to lend money using the apartments as
D security for the loan. The banks had nothing to do with the plaintiffs' purchase of the apartments. It was strictly a matter between the developer and the plaintiffs; and the banks as the provider of the loan, should not be concerned with the propriety or legality of any contracts entered into by Majlis
E Perbandaran Nilai, the developer, or any other persons leading to the acquisition and development of the land on which the apartments were built. (para 17)

(2) It was clearly repugnant to good reason and common sense to find a cause of action based purely on the assertion that
F the banks were expected to know of those alleged irregularities and should therefore be estopped from enforcing their rights under the loan agreements. The consideration and object of the loan given by the banks to the plaintiffs were clearly not of such a nature that, if permitted, would defeat any law
G contrary to s. 24(b) of the Contracts Act 1950. (para 19)

(3) The sale and purchase of the apartments had been completed. The loan sums had been disbursed to pay for the purchase. No court would lend its hand in equity to a party to declare
H the other estopped from exercising his right under a loan agreement where it was plain and obvious that to do so would result in the former unjustly benefiting from not having to repay the loan. (para 22)

I

(4) The plaintiffs' action against the banks was purely preemptive calculated to forestall any action by the banks to recover the loan from the plaintiffs at least for the period that the question of illegality concerning the development of the apartment remained unresolved. Such an act was an abuse of the process of the court which may be prompted to act under its inherent jurisdiction to strike out the plaintiffs' action against the banks. The deputy registrar was right in allowing the defendants' application to strike out the plaintiffs' pleadings against them. (para 23)

Case(s) referred to:

Chung Khiaw Bank Ltd v. Hotel Rasa Sayang Sdn Bhd & Anor [1990] 1 CLJ 675; [1990] 1 CLJ (Rep) 57 SC ***(refd)***

Co-operative Central Bank Ltd (In receivership) v. Feyen Development Sdn Bhd [1995] 4 CLJ 300 HC ***(refd)***

Drummond-Jackson v. British Medical Association [1970] 1 All ER 1094 ***(refd)***

Keng Soon Finance Bhd v. MK Retnam Holdings Sdn Bhd; Bhagat Singh Surain Singh & Ors (Interveners) [1996] 4 CLJ 52 HC ***(refd)***

Lai Yoke Ngan & Anor v. Chin Teck Kwee & Anor [1997] 3 CLJ 305 FC ***(refd)***

Loh Holdings Sdn Bhd v. Peglin Development Sdn Bhd & Anor [1984] 2 CLJ 88; [1984] 1 CLJ (Rep) 211 FC ***(refd)***

Lori Malaysia Bhd v. Arab-Malaysian Finance Bhd [1999] 2 CLJ 997 FC ***(refd)***

NV Multi Corporation Berhad & Ors v. Suruhanjaya Syarikat Malaysia Kuala Lumpur (High Court OS D5-21-40-2004) (Unreported) ***(refd)***

Republic of Peru v. Peruvian Guano Co [1887] 36 Ch D 489 ***(refd)***

Tan Kok Tong v. Hoe Hong Trading Co Sdn Bhd [2007] 2 CLJ 305 CA ***(refd)***

Verschures Creameries, Ltd v. Hull and Netherlands Steamship Co, Ltd [1921] All ER 215 ***(refd)***

Wenlock v. Moloney [1965] 2 All ER 87 ***(refd)***

Legislation referred to:

Companies Act 1967, s. 67
Contracts Act 1950, s. 24(b)
Local Government Act 1976, s. 101(r)
Rules of the High Court 1980, O. 18 r. 19(1)(a)

For the plaintiffs - Malik Imtiaz Sarwar (M Lavendran with him); M/s Ngeow & Tan

For the defendants - Benjamin John Dawson (Koh San Tee with him); M/s Benjamin Dawson

Reported by Suhainah Wahiduddin

A

JUDGMENT

Kang Hwee Gee J:

This Is My Oral Judgment: ***(Ex-tempore)***

B **[1]** This is an appeal by the 30th, 54th, 134th, 160th, 161st, 162nd, 164th, 165th, 166th, 167th, 168th, 177th, 178th plaintiffs against the decision of the deputy registrar in allowing the application by the 14th, 17th and 18th defendants to strike out the plaintiffs' action on account that there is no reasonable cause
C of action pursuant to O. 18 r. 19(1)(a) of the Rules of the High Court 1980.

[2] All the 178 plaintiffs were purchasers of apartments to be built by a developer called Dataran Mantin Sdn Bhd and had
D obtained end financing from various financial institutions including the 14th, 17th and 18th defendants *vide* the respective loan cum assignment agreements entered into between them and the defendants.

E **[3]** The plaintiffs had commenced this suit against the developer, directors of certain companies connected with the developer whom the plaintiffs alleged had conspired to defraud the plaintiffs by way of a scheme aimed at inducing the plaintiffs into purchasing apartments from the developer.

F **[4]** As against the financial institutions including the present defendants in this appeal, the plaintiffs alleged in paras 30 to 40 that in essence alleged the primary instrument that is the sale and purchase agreements entered into between the plaintiffs and the developer were void in law for having contravened the Power of
G Attorney Act 1949, the Local Government Act 1976 and the Companies Act 1965 and consequently the end financing agreements which the plaintiffs signed with the financial institutions would be void and of no effect. The declaration sought in this case against the financial institutions (the subject of this appeal)
H was to declare the financing agreements null and void and accordingly the financial institutions should be estopped from enforcing the financing agreements.

[5] The grounds upon which the application to strike out are as
I follows:

1. The borrowers cannot blow hot and cold by contending on the one hand that the financing agreements were valid when they required the purchase price to be paid from us and on the other to say that the agreement is void and invalid when it comes to their obligation to repay the borrowed funds.

2. Essentially the plaintiffs' case as a borrower is a restitutionary relief sought against us and such a relief will not be granted unless the plaintiffs restore the benefit of the loan back to the bank.

3. It should immediately be noted that the loan was granted by the bank at the behest of the plaintiffs themselves and had been fully disbursed to the developer as provided under the financing agreements. How could then the plaintiffs who requested us to finance their chosen investment can later be heard to say that they are absolved from repaying the loan. Consider also the timing in which the plaintiffs chose to raise the alleged illegality issues. It is raised not before the release of the loan but after the loan had been disbursed. See *Verschures Creameries, Ltd v. Hull and Netherlands Steamship Co, Ltd* [1921] All ER 215 at p. 3 per Lord Justice Scrutton: "A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn around and say it is void for the purpose of securing some other advantage."

4. It is an indispensable rule of equity that where the plaintiffs are seeking an equitable restitutionary relief as in the present case where the plaintiffs are seeking a declaration that would rescind the financing agreements then he must first repay the loan to us the bank. See *Baranick v. Counsel Trust Co.* Unreported, 4 January 1994 (General Division of the Ontario Court) where Rosenberg, J held "it is commonly said that it is a condition of the availability of such relief that it is possible to effect a *restitutio in integrum* of both parties – there must be a restoration of the *status quo ante*. …. the injured party is not entitled to the equitable remedy of rescission … He must be in a position to offer *restitutio in integrum* and must formally tender such restitution.

The principle in the *Baranick* case is that you cannot seek a declaration that the mortgage be set aside without being accountable for the return of the borrowed funds, without first making restitution of any funds that may have been paid up on the mortgage by the trust company.

5. The illegality if any of the sale and purchase agreements does not taint the financing agreements. The fallacy of the plaintiffs' argument is in saying that the financing agreement is subsidiary to the sale and purchase agreement which they described as the primary instrument. That is wrong. The financing agreements are independent and separate contracts from the sale and purchase agreements both involving different parties. Under the sale and purchase agreement the plaintiffs have an obligation to pay the purchase price to the developer whereas under the financing agreement they have covenanted to repay to the defendants' bank the monies borrowed. Both are primary instruments on their own involving different parties. The relationship between the bank and the borrower is a contractual one. The bank did no more than to lend the money as requested. The plaintiffs rely on the authority of *Keng Soon Finance Bhd v. MK Retnam Holdings Sdn Bhd; Bhagat Singh Surain Singh & Ors (Interveners)* [1996] 4 CLJ 52 HC. There the contract is between the lender and the developer. The developer there having executed various sale and purchase agreements then proceeded to execute a charge in favour of the lender. This was specifically prohibited by the Housing Developers Act 1966 and it was accordingly struck down on the ground that the contract was contrary to the statute and was void as against public policy because the Act was framed specifically for the protection of the purchasers. In our case it is the purchasers who requested the financiers to financially assist them in their investment with the developer.

6. In conclusion a substantial part of the statement of claim paras 23 to 29 shows that the plaintiffs are unhappy with the commercial return of their investment. It is obvious that they want to be freed from their misfortune at the expense of the bank. They cannot unwind the state of affairs without first repaying the sums lent by the defendants in full.

7. It is therefore submitted that the statement of claim discloses no cause of action and is plainly unsustainable.

[6] Submission By Counsel For The Plaintiffs

1. This is not a plain and obvious case for striking out. It must be borne in mind that the defendants have applied under limb (a) O. 18 r. 19 to strike out on the ground that there is no reasonable cause of action. The defendants are therefore confined to the 4 corners of the plaintiffs' pleading and as such references to the nature of the financing agreements are references which should not be admitted.

2. In response to the specific contention of the defendants, the plaintiffs are not blowing hot and cold. They are contending that by reason of law the sale and purchase agreements are void and as such the end financing agreements secured by purported assignment of rights under the sale and purchase agreements are also void.

3. The contravention of statute in issue does not only involve the question of illegality, they also raised the question of the power of the parties concerned into entering into the sale and purchase agreements. In this regard the plaintiffs firstly contend that the sale and purchase agreements and the adjunct guarantee return schemes were "investment contracts" within the meaning of Part 4 Division 5 of the Companies Act 1965. If so only public companies are permitted in law to offer such contracts and even then such contracts are to be in approved deeds. See *NV Multi Corporation Berhad & 10 Ors v. Suruhanjaya Syarikat Malaysia Kuala Lumpur* High Court OS D5-21-40-2004.

4. Consideration must be had to s. 24(b) of the Contracts Act 1950 which provides for agreement that defeat law as being void. See *Chung Khiaw Bank Ltd v. Hotel Rasa Sayang Sdn Bhd & Anor* [1990] 1 CLJ 675; [1990] 1 CLJ (Rep) 57. The question of whether the transaction in issue here is void under s. 24(b) is a mixed question of fact and law requiring a consideration of the evidence in totality. See *Lori Malaysia Bhd v. Arab-Malaysian Finance Bhd* [1999] 2 CLJ 997. The application here is made under O. 18 r. 19(1)(a) of the Rules of the High Court 1980 which does not allow for any consideration beyond the four corners of the plaintiffs' statement of claim. It is submitted that the plaintiffs have established a cause of action by their pleading and the fact that the claim may not necessarily succeed should not be held

against the plaintiffs. See *Loh Holdings Sdn Bhd v. Peglin Development Sdn Bhd & Anor* [1984] 2 CLJ 88; [1984] 1 CLJ (Rep) 211. Additionally the plaintiffs have sought declaration that identifies causes of action sufficiently. See *Lai Yoke Ngan & Anor v. Chin Teck Kwee & Anor* [1997] 3 CLJ 305.

[7] Reply By Counsel For The 14th, 17th And 18th Defendants

1. No purpose would be served by either counsel producing before the court a list of authorities on what constitutes plain and obvious cases. Each case must be determined on its peculiar facts. The test is this – it is not sufficient for the plaintiffs to merely say I have identified several issues which ought to be tried. The court must go on to further satisfy itself that there are issues that must be tried.

2. The complaint about the sale and purchase agreements relates to separate and distinct contracts between the financiers and the plaintiffs of that case.

3. It is not open to the plaintiffs to disown their investments at the expense of their financiers. The financiers after all granted the financing at their request and released the monies to the developer as their agent.

4. In the *Baranick v. Counsel Trust Co.* Unreported, 4 January 1994 (Gen. Div.), the Canadian court of Ontario held that it was not open for the purchasers to seek to set aside the mortgage security without first making restitution to the financiers. The court struck out the plaintiffs' action to declare the purchasers' mortgage with the bank of the purchase Guildford Place condominium on account that certain requirement of the security commission for the sale of the condominium was not met by the vendors. This was Justice Rosenberg said at p. 10 of the unreported case as follows:

> The equitable remedy of rescission involves the setting aside of a transaction and the granting of such incidental relief as will restore the parties to their previous position ... The remedy of rescission is an instrument of restitutionary relief in that it normally involves a restoration of the value of benefits conferred by each party ... Accordingly, the plaintiffs having been offered rescission although they are not at law entitled to same, cannot now

seek rescission when they have been offered it and failed to respond. Whatever may be the plaintiffs' rights against the original promoter/vendor they are not entitled to rescission of the mortgages without repaying sums owing on the mortgages.

5. There is nothing illegal about the financing agreement which is simply to enable the plaintiffs to purchase service apartments. Neither is there anything illegal in the object of the sale and purchase agreement which is the purchase of service apartments. A careful reading of the illustration in s. 24 will show that the law strikes down the section where the object is unlawful. There is nothing unlawful about the object of each of these two agreements that is to say the sale and purchase agreement entered into between the purchasers and the developer and the financing agreement between the purchaser and the bank.

6. In form and in substance this is a pre-emptive action in that if this issue of law is not determined at this stage the bank would be bound hand and foot from claiming the monies lent until the action is tried many years later.

7. Per Edgar Joseph Jr FCJ in *Co-operative Central Bank Ltd (In receivership) v. Feyen Development Sdn Bhd* [1995] 4 CLJ 300: "a commercial judge must be anxious about the impact that a decision may have on the proper functioning of the commercial community." In this regard I say to hold that the plaintiffs can disown their chosen investment at the expense of the bank will strike terror to the banking community.

[8] Reply By Counsel For The Plaintiffs

1. At the highest if the plaintiffs are correct then the bank would have financed illegal transaction. The law pertaining to local government bodies in the context of this case is not settled. Similarly the law relating to the application of Division 5 of the Companies Act 1965 is also not settled. To this end it is not right to assert that the object of the agreement between the developer and the purchasers was not illegal. That is an issue which cannot be determined summarily on the pleadings.

2. There is no material before this court to show what was made available to the bank for the purpose of obtaining the loan. It is not possible to determine what the bank knew or what the bank did not know at this stage. The statement of claim sets the cause of action on the footing that the bank at the very least was required in law to know of the application of Division 5 of the Companies Act 1965 to situations involving the sale of service apartments coupled with guarantee returns.

3. The *Baranick* case has to be considered on its own facts. At p. 8 of the unreported decision para 36 it is apparent that the plaintiffs there were given an opportunity to rescind which they did not take up. That is not the case here. Further at para 51 at p. 10 it is also stated that "it is a condition of the availability of such relief that it is possible to effect a restitutio in integrum of both parties". The operative word is "possible". It is possible in this situation.

Findings And Decision

[9] The 14th, 17th and 18th defendants' (hereinafter referred to as the "banks") joint application to strike out is made specifically under O. 18 r. 19(1) of the Rules of the High Court 1980 on the ground that the plaintiffs' pleading does not disclose a reasonable cause of action in so far as it involves the banks.

[10] In essence what the plaintiffs are seeking by this action first is to declare the sale and purchase agreements which they had individually entered into with the developer of the condominium void – by reason that the local authority Majlis Perbandaran Nilai (the 7th defendant) the owner of the land, on which the condominium was developed had contravened s. 101(r) proviso (i) of the Local Government Act 1976 which requires the consent of the State Authorities before the said Majlis Perbandaran Nilai can dispose of its property to the developer to be developed, and certain defects in the power of attorney granted by the Majlis to the developer to authorize the developer to act on its behalf where necessary with respect to the development. The plaintiffs also contend that the sale of the apartments to the plaintiffs was in fact a sale under a guarantee return scheme which constitutes an "investment contract" under para 4 of Division 5 of the Companies Act 1965 which the developer cannot in law undertake.

[11] The plaintiffs' cause of action against the banks (the subject matter of the present proceeding) however, is premised not on any impropriety on the part of the banks in granting the loan to the plaintiffs but on the assertion that the banks were expected to know of the alleged irregularities committed by Majlis Perbandaran Nilai and the developer, and consequently the Banks should be estopped from exercising their right under the loan agreements.

[12] This is to be found in para 34 of the statement of claim which read as follows:

> 34. In view of the foregoing, the Plaintiffs contend that the 7th Defendant did not have the power in law to give the PA in favour of the 1st Defendant under the Local Government Act, 1976 and subsidiary legislation. Further or in the alternative, the PA was, in any event, insufficient in law. The 1st Defendant as such did not as a matter of law have the capacity to enter into the SPAs. The SPAs are as such void.
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> 34.1 The Banks were expected in law to know this as a matter of law and as such, all end financing agreements are similarly void as instruments arising out of, or otherwise connected with, the SPAs.
>
> 34.2 The Banks were not in law empowered or authorised to act in any manner contrary to law. Providing end financing in these circumstances was a breach of banking laws and/or the licences under which the Banks operated.
>
> 34.3 The endorsing Banks were further under a duty of care to the Plaintiffs with regard entering into the end financing relationships they did. This duty was founded on the fact of the Banks having endorsed the development and having entered the end financing relationships in the circumstances set out above. The endorsing Banks breached their duty of care for not having appraised the Plaintiffs of the fact that the 7th Defendant had no legal right to act through the 1st Defendant and in the circumstances, and in any event, by reason of it being unconscionable, are estopped from asserting their rights under the end financing agreements in connection with the foregoing.

[13] Having scrutinised the plaintiffs' pleading, I consider it unnecessary for me to undertake the onerous task of examining the cases submitted by counsel for the plaintiffs on the legality of the loan agreements that the plaintiffs had entered into with the

banks assuming that the plaintiffs succeeded in their action to declare the sale and purchase agreements with the developer void. Rather, all that would be required is to apply common sense against a set of well treaded and established procedural law relating to the striking out of pleadings which do not disclose a reasonable action.

[14] The following very basic principles gleaned from the 1988 edition of the White Book which I consider relevant for the present purpose have been accepted and applied in our jurisdiction:

- A reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleading are considered; per Lord Pearson in the English Court of Appeal case of *Drummond-Jackson v. British Medical Association* [1970] 1 All ER 1094.

- So long as the statement of claim or the particulars disclose some cause of action, or raise some questions fit to be decided by a judge or jury, the mere fact that the case is weak, and not likely to succeed, is no ground for striking out. (Court of Appeal in *Wenlock v. Moloney* [1965] 2 All ER 87.)

- Where a cause of action discloses no cause of action only because a material averment has been omitted, the court while striking out the action will not dismiss the action but give the plaintiffs leave to amend, unless the court is satisfied that no amendment however ingenious, will cure the defect (*Republic of Peru v. Peruvian Guano Co.* [1887] 36 Ch. D 489 at 496.)

[15] Having considered the submissions of the parties, I find the plaintiffs' pleading seeking to prevent the banks from exercising their rights under the loan agreements plainly unsustainable.

[16] The relationship between the plaintiffs and the banks is purely commercial in nature strictly on a *quid pro quo* basis that the monies were lent to be repaid in accordance with the terms and conditions of the loan agreements.

[17] The contracts were therefore purely contracts to lend money using the apartments as security for the loan. The banks had nothing to do with the plaintiffs' purchase of the apartments. It was strictly a matter between the developer and the plaintiffs;

and the banks as the provider of the loan, should not be concerned with the propriety or legality of any contracts entered into by Majlis Perbandaran Nilai, the developer, or any other persons leading to the acquisition and development of the land on which the apartments were built. As a matter of fact the banks would be as much a victim with respect to the apartments they had taken as a security if indeed they turned out to be not worth their value of the loan taken.

[18] The fact that the Majlis Perbandaran Nilai may have contravened the Local Government Act 1976 or the Power Attorney Act 1949 in granting the developer the power to act on its behalf, and that the sale of the apartments to the plaintiff may have been made in contravention of Division 5 of the Companies Act 1965 even if subsequently proved by the plaintiffs and accepted by the court at the trial, is totally irrelevant in so far as it involves the liability of the plaintiffs to the banks under the loan agreements that they have taken.

[19] It is clearly repugnant to good reason and common sense to find a cause of action based purely on the assertion that the banks were expected to know of those alleged irregularities and should therefore be estopped from enforcing their rights under the loan agreements. I would agree entirely with the submission of counsel for the banks that the consideration and object of the loan given by the banks to the plaintiffs were clearly not of such a nature that, if permitted, would defeat any law contrary to s. 24(b) of the Contracts Act 1950.

[20] The case of *Chung Khiaw Bank* relied upon by counsel for the plaintiffs does not support the plaintiffs' right to maintain the action against the banks as it relates to some illegality being committed by a party in the contract to which the other was privy to.

[21] *Chung Khiaw Bank* was a case of the bank having accepted the securities provided by Rasa Sayang Hotel to secure a loan which the bank provided to a director of a subsidiary company of the hotel to facilitate the purchase of the hotel's own shares. The activity contravened s. 67 of the Companies Act 1967 which prohibits a company from giving financial assistance to purchase its shares. This is quite unlike the loan agreements between the

plaintiffs and the banks which were concerned purely with providing the plaintiffs with the money to purchase the apartments and did not involve other parties.

[22] There is another reason why the plaintiffs' action against the Banks is unsustainable. The sale and purchase of the apartments had been completed. The loan sums had been disbursed to pay for the purchase. No court would lend its hand in equity to a party to declare the other estopped from exercising his right under a loan agreement where it is plain and obvious that to do so would result in the former unjustly benefiting from not having to repay the loan. As alluded to by Rosenberg J of the Canadian High Court of Ontario in *Baranick, supra,* such an order to bar the banks from exercising their rights under the loan agreements may only be obtained by the equitable remedy of rescission of the loan agreements, that is to say an order to unmake the agreements and to restore the parties back to *status quo ante* in which case the plaintiffs would have to repay whatever sums expended by the banks to the plaintiffs.

[23] I am inclined to agree with the the submission of counsel for the defendants that the plaintiffs' action against the banks is purely pre-emptive calculated to forestall any action by the banks to recover the loan from the plaintiffs at least for the period that the question of illegality concerning the development of the apartments remains unresolved. Needless to say, such an act is an abuse of the process of the court which may be prompted to act under its inherent jurisdiction to strike out the plaintiffs' action against the banks. One needs to be reminded of what Gopal Sri Ram said in *Tan Kok Tong v. Hoe Hong Trading Co Sdn Bhd* [2007] 2 CLJ 305 at 312:

> Every court has inherent jurisdiction to prevent an abuse of its process. It is a jurisdiction that is essential to ensure that the court's process is not used for a collateral purpose; that is to say for a purpose other than to obtain redress for a genuine grievance. This court has recognised that jurisdiction on more than one occasion. In *Malaysia Building Society Bhd v. Tan Sri General Ungku Nazaruddin bin Ungku Mohamed* [1998] 2 CLJ 340, this court observed as follows:
>
> > Every person who is aggrieved by some wrong he considers done him is at liberty to invoke the process of the court. Equally may a litigant invoke the process to enforce some claim which he perceives he has against

> another. When however, the process of the court is invoked, not for the genuine purpose of obtaining the relief claimed, but for a collateral purpose, for example, to oppress the defendant, it becomes an abuse of process. Where the court's process is abused, the proceedings complained of may be stayed, or if it is too late to grant a stay, the party injured may bring an action based on the tort of collateral abuse of process.

The position has been neatly summed up by Lord Denning MR in his dissenting judgment in *Goldsmith v. Sperrings* [1977] 1 WLR 478, where at page 489 he said:

> In a civilised society, legal process is the machinery for keeping and doing justice. It can be used properly or it can be abused. It is used properly when it is invoked for the vindication of men's rights or the enforcement of just claims. It is abused when it is diverted from its true course so as to serve extortion or oppression: or to exert pressure so as to achieve an improper end. When it is so abused, it is a tort, a wrong known to the law. The judges can and will intervene to stop it. They will stay the legal process, if they can, before any harm is done. If they cannot stop it in time, and harm is done, they will give damages against the wrongdoer.

[24] It is plain and obvious that the plaintiffs do not have a cause of action against the 14th, 17th and 18th defendants. The deputy registrar was right in allowing their application to strike out the plaintiffs' pleading against them.

[25] The plaintiffs' appeal is dismissed with costs.